



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 6781-99  
30 June 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149  
(2) Case summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable of discharge than the undesirable discharge issued on 25 March 1954.

2. The Board, consisting of Ms. Humberd, and Messrs. Tew and Silberman, reviewed Petitioner's allegations of error and injustice on 28 June 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 6 November 1951 for four years at age 18. His record reflects that he was advanced to CSSN (E-3) and was authorized the Korean Service Medal for service on board the USS BUCK.

d. Petitioner served without incident until 5 January 1954, when a security patrolman stated that on or about 0020 hours on 2 January 1954, he witnessed Petitioner and another Sailor engaged in what appeared to be a homosexual act behind the barracks. Both Petitioner and the other Sailor denied that they had engaged in a homosexual act. The other Sailor stated that he had been out drinking with Petitioner, just finished urinating, and Petitioner had fallen down and was getting up when the security patrolman came upon them behind the barracks. Although Petitioner denied any homosexual activity with the other sailor, he did admit to a homosexual act with a man while hitch-hiking in April or May of 1952. Thereafter, Petitioner agreed to accept an undesirable discharge for the good of the service to escape trial by general court-martial.

e. On 26 February 1954 the commanding officer recommended an undesirable discharge. He stated a thorough investigation of Petitioner's homosexual activities were substantiated by the security patrolman's statement and Petitioner's own admission to participation in one homosexual act during his enlistment. However, he noted there were no provable acts. He believed that Petitioner was a potential homosexual and that his request for discharge was not motivated by a desire to escape naval service. An administrative discharge board convened on 5 March 1954 in the Bureau of Naval Personnel and recommended that Petitioner be separated with an undesirable discharge. The Chief of Naval Personnel directed an undesirable discharge by reason of unfitness. Petitioner was so discharged on 25 March 1954. At the time of his discharge, Petitioner's military behavior and overall traits averages were 4.0 and 3.66, respectively.

f. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted servicemembers. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those servicemembers who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless certain aggravating factors are present. One such factor is that the homosexual act occurred "openly in public view."

g. In accordance with reference (b), an individual separated due to homosexuality may receive an honorable discharge if there are no aggravating factors and the conduct and overall traits averages are at least 3.0 and 2.8, respectively.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 25 March 1954 the date of Petitioner's discharge, the Board concludes that it would be in the interests of justice to retroactively apply the standards of reference (b) to Petitioner's case. It appears to the Board that discharge under other than honorable conditions would be authorized under that reference if Petitioner committed a homosexual act behind the barracks, and this act was deemed to have been committed openly and in public view. However, the Board notes the commanding officer's statement that the homosexual acts were not provable. Accordingly, it appears the real basis for Petitioner's discharge was his admission to a prior homosexual act, for which there appears to be no aggravation. The Board also notes that he was a good performer during his nearly four years of service and had no disciplinary actions. Therefore, using the standards of reference (b), the majority finds that relief in the form of recharacterization to an honorable discharge is appropriate.

#### RECOMMENDATION:

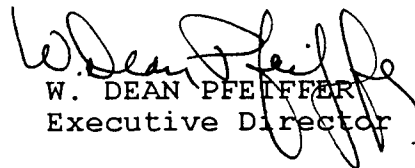
- a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of unfitness on 25 March 1954 vice the undesirable discharge actually issued on that date.
- b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
- c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 9 August 1999.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director